

REMARKS

Claims 1-11 remain in the application. Claims 1, 8 and 9 have been amended. New claim 12 has been added. The Examiner is authorized to charge any fees arising from this response to Deposit Account No. 10-0096.

The Examiner rejected claims 1-11 under 35 U.S.C. 112, second paragraph on the grounds that i) the statutory class for claims 1-8 is unclear and ii) claims 8-11 lack a payment making step as recited in the preamble. For the record, Applicant states that claims 1-8 are directed to an apparatus. With respect to a payment step, claims 8 and 9 have been amended. It is believed that this amendment overcomes the Examiner's grounds of rejection concerning lack of recitation of a payment step.

The Examiner has rejected claims 1-11 under 35 U.S.C. 102(b) as being anticipated by Davis et al. (USP 6,282,522). Applicant traverses this rejection on the grounds that Davis does not teach each and every element of the amended claims.

Davis teaches an Internet payment system using a smart card. While the smart card is referred to as a "stored value card" as the term is also used in Applicant's specification, the term has a completely different meaning in Davis. Specifically, the stored value card in Davis is a "processor" card, in that the physical card includes an embedded microcontroller 10 that includes a microprocessor 12, a random access memory (RAM) 14, read-only memory (ROM) 16, non-volatile memory 18, and encryption module 22 and a card reader interface 24. Col. 3, lines 48-60. Notably, an actual dollar value is stored on the card. Col. 8, lines 64-67. Davis teaches that use of such a card has advantages because processing is done on the card rather than in the terminal or host computer. Col. 9, lines 1-15. Davis also teaches that use of a network [such as is used by Applicant] for these functions is undesirable and that a stored-value card with the capability for performing off-line processing and authentication by itself is extremely valuable. Notably, the system of Davis is only

provided for use with Internet purchases utilizing a card reader attached to a personal computer.
Col. 7, lines 9-14.

In contrast to Davis, part of the novelty of the invention is that it combines certain user identification/security features common to credit/debit cards (and the convenience thereof) with a payment system more often utilized for check payments, i.e., the ACH settlement system (and more desirable to merchants because of the lower fees charged to merchants). Specifically, the invention utilizes a card only for providing user identification and a request for a transaction, not for actually storing a value. See reference to user file 11a, Paragraph 14. This user identification is combined with identifying information of the merchant (file 11b) all of which is then transmitted to virtual switch 30 referred to as the “receiver processing system” in Claim 1. At the receiver processing system, which is external to the card bearing identification information (and which is also external to the input device), authentication occurs, approval/disapproval for the transaction occurs, and instructions to the ACH are initiated. Unlike Davis, these functions must occur in a system that can communicate with the user selected payment institutions in order to verify that the institutions have the requested funds. In Davis, the funds are simply stored on the card itself. Notably, the receiver processing system is not the final payment financial institution.

With respect to Claim 1, the Examiner cited Col. 4, lines 30-50 and Figures 5 and 10 of Davis. Applicant has carefully reviewed this section and finds no description equivalent to the elements of claim 1. Rather, this is where Davis describes traditional credit cards and introduces the notion of its “smart card” or “stored value card 5” that has the embedded microcontroller 10 that includes a microprocessor 12, a random access memory (RAM) 14, read-only memory (ROM) 16, non-volatile memory 18, and encryption module 22 and a card reader interface 24. In fact, this citation by the Examiner underscores some of the differences between Applicant’s invention and the Davis system.

With respect to Claim 9, the Examiner cited Col. 5, lines 35-45 and Col. 9, lines 1-15 and Figures 10 and 5. Again, applicant has carefully reviewed the cited sections and can find no reference to each of the claim steps. In particular, part of the novelty of the system is that the user can direct which institution or institutions shall make a particular payment. At paragraph 17, the specification teaches that

The SVP customer/user is a member of the system and will have **instructed the system to handle his transactions in a specific manner**. For example, the customer member may instruct the system **to prioritize use of his accounts**, e.g., first debiting a cash account so long as the balance stays above a specific floor, and then charging the transaction to one or more credit accounts. In addition, **the system will permit customization not previously supported**. For example, if the service provider is a medical clinic and the user has a health plan with a co-pay or deductible, the SVP system will permit the customer to pay for the services and automatically deduct the co-pay or deductible from a customer cash or credit account while making the remaining payment from the insurance carrier account.

The foregoing “customization” or “instructions” by the user represents the “pre-established criteria controlled by the user” as recited in Claim 9. There is simply no such step taught in Davis. Nor would there be. Davis simply makes a determination if the amount of funds “stored” on the stored value card is sufficient to cover the transaction. Nothing needs to be “pre-established” by the user as is contemplated by the invention. Applicant further notes that user authentication occurs on the card of Davis itself without having to be transmitted to a processing system (Davis teaches that such technique is undesirable. See Col. 9, lines 1-15). Because a user in the Applicant’s invention can select and utilize multiple financial institutions (even in a single transaction) and varying types of transactions (customer cash, credit, etc.), the system provides a very flexible payment system that is directed by the user. Paragraph 54. All while minimizing merchant fees and membership requirements.

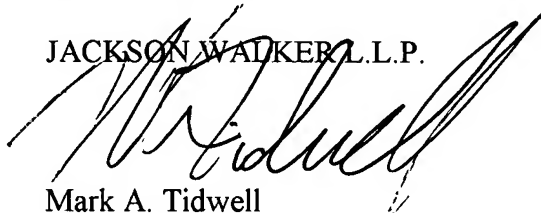
In conclusion, Davis teaches neither each and every element of Claim 1 or each and every step of Claim 9. As such, Davis does not anticipate the independent claims of the invention and the rejection under 35 U.S.C. 102(b) should be withdrawn.

For the foregoing reasons, allowance of the pending claims is earnestly solicited.

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the prior art references. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by Examiner, Applicant does not acquiesce to Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the anticipation rejections.

Respectfully submitted,

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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service, with sufficient postage as First Class Mail, in an envelope addressed to Box Response/No Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313.

Date: November 9, 2007

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